Xstrata Coal Queensland Pty Ltd & Ors/Mark Albury & Ors (Karingbal #2); Brendan Wyman & Ors (Bidjara People)/Queensland [2012] NNTTA 93
Karingbal #2 and GVP

• Karingbal #2:
  - GVP attended one meeting, no compensation offer

• GVP:
  - State practice not to offer compensation
  - GP liable under NTA and *Mineral Resources Act 1989* (Qld)

• NNTT:
  - ‘Dual deed system’ prevailing in Qld
  - In absence of proposal from Karingbal #2, no requirement for GVP to make reasonable offers to reach agreement
Karingbal #2 and GVP

• Karingbal #2:
  - GVP had dealings with individual claimant, others purporting to speak for group

• GVP
  - Interactions concerned matters of cultural heritage, composition of claim group, conduct of negotiations

• NNTT:
  - GVP has a range of roles and responsibilities, incl administering cultural heritage and mining legislation
Karingbal #2 and GP

- Karingbal #2:
  - Compensation offer inadequate

- GP:
  - Made offer, responded to counter offer, made revised offer

- NNTT:
  - Offers not manifestly and obviously unfair
  - GP clearly articulated basis for offers, invited response, considered other proposals
Karingbal #2 and GP

• Karingbal #2
  - GP failed to provide information about valuation and extent of extinguishment on other tenements

• NNTT:
  - Extent of extinguishment on other tenements irrelevant to inquiry, information publically available
  - Basis for calculating offer clearly stated, disputed, discussed
Bidjara People and GVP

• Bidjara People:
  - Not contacted by GVP

• GVP:
  - Three separate items of correspondence, no reply from Bidjara People
  - Had contacted GP to seek info on progress and offer assistance

• NNTT:
  - GVP acted reasonably by reference to ‘dual deed’ system
Bidjara People and GP

- **Bidjara People:**
  - GP refused to pay reasonable costs to attend meetings
- **GP:**
  - Did offer to fund negotiations, but Bidjara people considered offer inadequate compared to funding practices of other mining companies
- **NNTT:**
  - GP made repeated offers to pay costs at rates apparently acceptable to other NTPs (incl Karingbal #2)
  - Principal reason negotiations did not proceed was that funding proposal not accepted by Bidjara People
Bidjara People and GP

• Bidjara People:
  - Compensation offer unreasonable
  - Offer made on ‘take it or leave it’ basis

• GP:
  - Bidjara People did not offer an alternative proposal, provided no formal response until day FADA made

• NNTT:
  - Offer was not manifestly unreasonable
  - No evidence to support contention that GP maintained rigid non-negotiable position
Bidjara People and GP

• Policy not to consider profit- or royalty-type payments
  - no evidence to support contention

• Dishonest conduct/bad faith in other negotiations
  - no evidence to support contention, not relevant to inquiry

• Timing of FADA
  - Lodging FADA not itself indicative of lack of good faith
  - GP not obliged to inform NTPs of intention to lodge FADA